Central Law Journal.

St. Louis, Mo., February 24, 1922.

CONGESTED FEDERAL COURT DOCKETS.

When business men purpose increasing the output of their factories, the directors anticipate the additional burden inevitably following with suitable extensions of machinery and working force. Or, if it be intended to obtain the proposed increased result without augmenting the personnel or the machinery, then there occurs a reorganization of existing arrangements so as to serve the added load. But this is the business way of doing it, and not the legislative.

When the government purposes to increase the output of *malum prohibitum*, the Congress does not anticipate the additional work, that every reasonable man senses, with suitable extensions in the different departments, nor does it reorganize the existing establishment so as to assure against a congestion in one department or bureau. Nor does it make a survey of conditions for its enlightenment. And no amount of warning seems to prove effective as to its treatment of the Judicial Department and the resulting evil consequences.

A united bench and bar has appealed to these statesmen in vain. Concrete propositions looking to scientific relief have been ignored. Remedies have been proposed resulting from the mature deliberation of the elder statesmen of the bench and bar and have lain for years in the pigeon holes of committee desks. Every now and then, some statesman with a superior knowledge of the science of judicature and its importance to a proper functioning of the government and the contentment of the people, raises up his voice in protest, but it is a voice crying in the wilderness of obstinacy, indifference or ignorance, as the case may be. Justice to them is not the greatest interest of man on earth. It has no rating in fact.

Some weeks ago, the Honorable Selden P. Spencer, Senator from Missouri, and a former distinguished lawyer and judge, announced to the Senate that "one of the questions with which we shall soon have to deal seriously is the crowded condition of the dockets of the federal courts." He justified his prediction by facts and figures taken and quoted an editorial from these columns (vol. 93, p. 327) from the public records. While nothing has been achieved from his very pertinent remarks, his brethren of the bench and bar have been given great encouragement. At least the Senate shall not have the excuse of ignorance. And the Senate of the United States, we venture to predict, will eventually answer to the people of America for the slow, expensive, indifferent and generally unsatisfactory manner in which justice is administered in the courts provided for them. The American people have never failed to give praise where it is earned and condemnation where it belongs. The American Bar Association's bill (S2870) for the purpose of simplifying law procedure in the same manner that equity, bankruptcy and admiralty practice have been simplified, has been suppressed in the Senate Judiciary Committee for eight years. That is a fair sample of the attention given to the administration of Justice, the respect paid to a unanimous and organized bench and bar, and the regard for a fair deal on the floor of the Senate. *The Committee has suppressed a report and the reason is immaterial to a constituency entitled to an equal opportunity and a fair prompt hearing.* This much is said in support of the charge of negligence, contempt or ignorance, whichever may be true, in individual cases.

The Congress is daily turning out prohibitory statutes provocative of some litigation. But the initiated need no instruction as to the number of cases arising out of the Volstead Prohibition Act, the Harrison Drug Act, the White Slave Act and the crimes coming within the acts regulating interstate carriers, that were once tried in state courts. It is no exaggeration to

say that the Federal District Courts have been turned into police courts for the trial of statutory misdemeanors. This reflects upon their dignity as much as upon their usefulness. The former innate fear of the federal courts is fast vanishing through familiarity to small criminals and petty violators of prohibitory statutes, who ought to be punished by state courts. We shall permit Senator Spencer, and substantially in his own words, to complete the indictment of the Senate, for he did his part well. "In 1913 there were commenced in the Federal District Courts 52,618 cases. At the end of 1913 there were 102,012 cases pending. In other words the docket has doubled, with absolutely no additional facilities provided by Congress. In 1920 there were 140,000 cases commenced. In other words the docket had trebled, without relief. The end of which no man can see."

Now let us analyze this huge docket. Of the 140,000 cases which were commenced in the district courts, more than 70,000 were criminal cases. Said Senator Spencer in criticism of this inexcusable condition, "the burdening of the dockets of the courts which have to deal with the great questions of the constitutional rights of the individual with a lot of cases, the punishment of which characterizes them as misdemeanors, is something which should give us great concern." Senator King here emphasized the fact that "nearly all of the 70,000 new cases (*sic.*, criminal cases) are misdemeanor cases, which ought to be tried by a justice of the peace or by some inferior tribunal." "I suggested," said Senator King, "at that time, and I beg leave to repeat the suggestion, that the Judiciary Committee take cognizance of the situation. I think some instrumentality, some judicial tribunal, may be devised supplementary to the present federal courts, in order to handle the misdemeanor cases." The Senator pointed out that "the business of the federal courts in the future will continue to increase". Senator McKellar directed attention that the criticism "holds true of a number of the Circuit Courts of Appeal * * the dockets of which are crowded so that the courts are more than two years behind." He mentioned several circuits in this condition. Said he "the same crowded condition exists in all the federal courts, both in the appellate and in the district courts." Senator Harrell, viewing it from the practical side, pointed to the enormous loss of revenue by the government arising from fines which were lost by delay in trials. But justice delayed is justice denied is the thought.

We have used the language of these learned and wise statesmen, who justly command the respect of the American people, to convict their brethern in the Senate of indifference; to support Senator Spencer's warning and to justify the harsh indictment against them that we have so reluctantly drawn. One is obliged to sympathize with our Senators on account of their grave responsibilities during the past several years. Yet, nothing will excuse the neglect of a reasonable administration of justice particularly when a unanimous bar association, after mature consideration, has evolved and recommended a way for relief, if not a reasonable perfection in achievment.

But, as wicked as is this condition, the story is not half told until the curtain is raised upon the Supreme Court of the United States and that noble and historic tribunal, the greatest court on the civilized globe, is observed as itself an appellate police court. And these words are spoken with the greatest respect but with an equal conviction.. The record will show that thousands of these petty misdemeanor cases that are congesting the district courts, attempt to find their way to the Supreme Court through petitions for writs of error or certiorari, seeking a rehearing or delay. Those who know it to be a fact will testify that every word of these petitions are carefully and conscientiously read by the overburdened justices who, in the words of Senator Spencer, thought instead to be engaged upon "the great questions of the con-

stitutional rights of the individual". The two words "petition denied" will be visualized by the thoughtful, into hours of laborious reading and research and thought, instead of the mere unsuccess of an effort at delay or a new trial. It means the eating away of the vitals of a sacred agency of government because of an unheeding Senate. The House stands ready to act. If, therefore, the congestion impairs the usefulness of the district courts, its destructiveness will eventually extend its poisoning influence to the mighty seat of justice, revered by the people of America and made well nigh immortal by John Marshall and his great successors and their consecrated and wise associates. And, this may an indulgent God forbid. An outraged people will never forgive or condone. There is no business coming before the Senate that will justify further neglect or indifference, if there were no other than this menace to the Supreme Court.

And the amazing thing is that the work to be done by the Senate is so slight. It is ouly necessary to vest in the Supreme Court of the United States the power and duty to formulate and recommend to the Senate a complete scientific reorganization of the judicial system of the United States and to prepare and promulgate a simple, correlated, scientific system of rules for the regulation of trials to take the place of the present conflicting, partly statutory, partly common law and partly court rule practice and procedure now in vogue, designated "Federal Practice" and which is understood by none and practiced by a few experts. A very simple resolution would achieve the first and the passage of S 2870, introduced by Senator Kellogg, would assure the second. The Congress would not be justified in performing this sacred and highly technical work in any other way. This is the way England did it to the good name of her House of Lords and her Parliament and the gratification of her people. Is the Senate too great to profit by a good example endorsed by the American Bar Asociation? The plan can be rejected if it prove unsatisfactory. There is absolutely no risk to run and much credit to be gained by even so great and historic a body as the Senate of the United States.

THOMAS W. SHELTON.

NOTES OF IMPORTANT DECISIONS

WHEN RUPTURE OF BLOOD VESSEL IS NOT ACCIDENTAL, WITHIN INSURANCE POLICY.—In the case of Husbands v. Indiana Travelers Accident Ass'n., 133 N. E. 130, the Supreme Court of Indiana holds that death resulting from the rupture of a blood vessel in the deceased's lungs, by exertion in shaking down ashes in a furnace in the usual manner, was not accidental, within the meaning of an insurance policy. The opinion of the Court contained the following:

"But the courts of Indiana are committed, we think, to the doctrine that, so far as death is concerned, such a policy covers only cases where death resulted from bodily injury caused by the 'accidental' application of external violence, and not cases where an accustomed and habitual act, intentionally done in the usual way, produced a rupture of the tissues of vital organs of the body that had become weakened by disease, and thereby caused death. After some previous decisions in which such an opinion had been outlined, the court, in sustaining a demurrer to a complaint on an accident policy, said:

" 'The policy sued on * * * provided that the appellee would pay the appellant $2,000 in the event her husband's death resulted directly and immediately from 'physical bodily injury inflicted by external, violent, and accidental means.' There would be no liability under the terms of the policy unless his death was the result of some physical bodily injury which was inflicted, not only by external and violent means, but was also accidentally received. * * *Assuming, without deciding, that the facts alleged sufficiently show that the decedent's death was the result of physical bodily injuries inflicted by external and violent means, there are no facts alleged showing that they were inflicted or at least received, 'accidentally.' An injury which is the result of an accident, as applied to the construction of insurance policies, is defined to be the result of some violence, casualty, or vis major to the assured, without his design or consent or voluntary co-operation" Newman v. Railway O. & E. A. Ass'n, 15 Ind. App. 29, 32, 42 N. E. 650, 651.

"Afterward the court held that a man who had traveled to a city in the mountains, and there climbed a hundred steps from the railway station to a hotel, carrying two handbags, and by reason of his physical condition and such unusual exertion so high above the sea

level, fell dead from paralysis of the heart, did not come to his death "from physical bodily injury through external, violent, and accidental means." In announcing its decision, the court reviewed many decisions of courts of this and other states, and said:

" 'The following cases hold, as do the decisions in this state, that the result, though unexpected, is not an accident within the meaning of an accident insurance policy providing for liability on death of insured by accidental means. The means or cause must be accidental. In these cases it is held that death resulting from voluntary physical exertion or from intentional acts on the part of the insured is not accidental and not within the meaning of a contract like the one under consideration. [Citing authorities.] * * * If the result is such as follows from ordinary means, voluntarily employed, in a not unusual or unexpected way, it cannot be called a result effected by accidental means. Schmidt v. Indiana T. A. Ass'n, 42 Ind. App. 483, 497, 85. N. E. 1032, 1037'."

SOME CONTRIBUTIONS OF URBAN LIFE TO MODERN CIVILIZATION.*

It is clear that with the concentration of population in cities and towns, largely in all advanced countries, in the last and the present century, the urban centers occupy the first place in the civilization of the earth. The study of these centers, the occasions and impulses by which they came to attain their supremacy, whether commercial, industrial, intellectual or political; the dominating mental and moral characteristics of their populations; their governments, arts and religions; and their scope, style and vigor of thought is a study of the advancement of mankind. The great questions of state, national, and at present, world politics are important, interesting and popular subjects for discussion, but urban life as it unfolds itself in the movements of man from the remotest time to our own day is undoubtedly of immense practical value in the examples it affords and the lessons it teaches. * * *

The crowding of peoples in cities and towns goes steadily on in this and all other civilized countries. According to the 14th and last census more than one-half of our whole population of over 105,000,000 make their homes in 2787 places of 2,500 inhabitants and upwards. At present more than 54,000,000 of our population is urban as against 51,000,000 rural—over 51 percent urban and less than 48 percent rural. Hence, our land, as in England and other European countries, is becoming more and more a collection of cities and towns and this has undoubtedly wrought a marked change in the character and political temperament of our people. The phenomenal growth of cities and towns in this country has given them a vast influence in our political and public social life and has created complex governmental problems especially applicable to them.

We are working out problems relating to urban life which at present are receiving the attention of the educated intelligence of our people, namely, the problem of providing needs and conveniences, and especially appropriate sanitary regulations, incident to crowded centers. These problems are rapidly increasing and pressing for just solution year by year. They require, as we know full well, the best scientific treatment, enormous expenditures of money, education and training in all phases of urban existence; they involve delicate questions relating to the proper adjustment of burdens, and above all, they demand honest and sufficient administration of the public affairs of the community in accordance with the latest experience and scientific discoveries and inventions, and the advanced ideas of justice which should be the dominating standards or ideals in this important work. * * *

In all the movements of mankind, the urban community has played the most important part. The municipal institution has in a greater measure than any other factor controlled the destinies of the human race It is and has ever been the motor power of civilization. Indeed, the whole story of man's achievement is largely the story of a

*This very interesting address was given by Hon. Eugene McQuillin at the Mid-Winter meeting of the Ohio State Bar Association at Akron on January 27, 1922.

few cities. Among the trials and struggles, the triumphs and failures, the glory and degradation of those who trod the earth long ago, the city stands out mountain-like in the landscape of history. The city is today and always has been the center of wealth; of political, industrial and commercial power; of poverty, squalor and human weakness; of education, virtue and morality; of ignorance, vice and crime.

One of the lessons of history is that the chief advances in all lines of human activity and popular development has been through the growth and nurture of urban life. The leading city has ever been the type of human progress. Every great people have had their great metropolis. The city was the life blood of ancient civilization. Thus, as mentioned by an Oxford scholar, (Fowler) to follow the fortunes of the Greek polis or the Roman urbs is to follow also the development and decay of thought and the social life of the people whose political instincts it expressed. This is true because in the life of the city of both of these races was gathered up all that was best and most fruitful in the civilizations of two wonderful peoples. As the city grew to perfection their social instincts and their power of thought grew with it; as it slowly decayed their literature, art and philosophy decayed also.

In ancient civilization city life was everywhere encouraged and organized; urban communities were planted where there had been none before. The desire to create cities was a dominating trait of the peoples of antiquity. Ancient rulers and statesmen vied with each other in founding cities. It has been said that under Alexander and his successors, Hellenic, or partly Hellenic, communities sprang up on the soil of Asia as if by magic. In this manner Greek culture was rapidly spread. The Romans followed the Greek example. The municipia became the efficient means of extending civilization throughout the Roman world. The Hellenisation of Western Asia by the Macedonian powers, writers often mention, was the most potent tide of advancing civilization known to history until Roman policy, using the municipality as its instrument, penetrated and transformed the West.

One characteristic of the ancient city was elaborate provision for the enjoyment of life by the inhabitants, as by the establishment of baths, theatres, parks, circuses and various places and kinds of amusements. This feature, it should be noted here, is in part, a function of the modern municipality, falling under the head of conveniences, or sometimes called luxuries—those things which promote general civic pride—a spirit originating and fostered in the ancient cities and which has survived through all the centuries.

The ancient municipality in many important respects differed widely from the modern. One essential requirement was that the municipality should have its own governing body. During the existence of the Roman Empire, the least of every duly constituted urban community was known as a state or "respublica," and its burgesses composed a "populus." It was first of all a city-state or town commonwealth. The ancient city of Rome, as is familiar, expanded from a city (urbs) to a world (orbis) and appeared to the Roman as the predominant city in a vast congeries of municipalities bound together which ruled the world.

In the growth of the urban community or city-state in the evolution of ancient society, it performed many of the functions of the state which developed later. In fact many of the older cities possessed all of the attributes of sovereign states. This independent status extends far back into remote antiquity. In this respect, it is clear, the ancient city-state is strongly contrasted with the modern city which, in the main, is a subordinate authority or political agent of a higher power which may at discretion impose its will not only on the cities and towns or municipal corporations within its territory, but upon all inhabitants and agencies of government therein, at pleasure. In England and in this

country, every municipality moves about more or less in state legislative chains, and in Continental Europe urban life is directed by the central power. As often pointed out by writers, herein lies the deepest of all the differences which distinguish the ancient municipality from the municipalities of the present age, and consequently we have nothing in our modern societies which correspond with the closeness of the Graeco-Roman city. However, partial parallels may be found. For example, Geneva, as a republic presented some resemblance to a primitive city-state. Again, a number of mediaeval Italian towns were states as well as towns, especially Venice which was a town-state until the end of the 18th century. And again, in the Middle Ages certain cities in Germany enjoyed a limited sovereignty, as Hamburg, Lubeck and Bremen.

After the fall of Rome the system of government and law developed by Roman genius disappeared with the decadence of urban life. Contemporaneously with this great collapse, entire cities and towns were almost uninhabited or blotted out; many became camps of mercenary soldiers, and many remained desolate for centuries. As factors in government they had become insignificant. Physicial prowess, contempt for industrious arts, savage license and the rapine of public robberies prevailed. Society had sunk for several centuries into a condition of utter depravity. It would be difficult to find anywhere more vice and less virtue. In the absence of the independence and vigor of municipal life, the several counties of Europe had only a degenerate race of men, without the slightest conception of liberty and lost to all sense of moral responsibility. Deprived of the beneficial effect of community association, there were no restraints on human conduct, and as a consequence the safety of men depended on their own strength. Might was right.

With the advent of feudalism came the fortified castles as the centers of life and movement. They had taken the place of the city and town which became subject to the dominion and often to the absolute will of the greater or lessor barons. The nobles lived in a state of war against each other and of rapine towards all mankind. The feudal nobles, the occupants of the castles, differing little from robbers, completely dominated European society. The most revolting crimes, including judicial perjury, escaped human punishment. The mass of the people had no security, most of them were mere serfs and lived in a state of abject slavery. Then the people presented three classes: Those who did the fighting and robbing, the mailed horsemen, called the nobles; those who did the praying, the tonsured priests; and those who did the work, the laborers bent with toil and hard fare.

Thus, when the town and city became subordinated to the barons and great landed proprietors during the five dismal centuries of feudalism, society was dislocated and in turmoil and human progress was hardly observable. It was not until the exorbitant powers and unrestricted rapacity of the feudal barons had been checked—when the centers of population became potential factors in the movements of the people—that development in civilization and culture could be discerned.

The institution of cities and towns, with charter privileges and endowed with a large measure of self-government and the establishment by them, of liberty and security and popular power, is the most important event in the progress of society in the Middle Ages. The urban centers became so many little republics governed by known and equal laws. With the revival of the municipality, as the directing force of society, came regular and stable government and protection to person and property. The spirit of industry at once possessed the people; trade, commerce and the mechanic arts flourished; population increased in number, health and vigor; learning, science and literature revived; polished manners were cultivated which diffused

themselves inperceptibly through all classes; and thus the cities and towns, especially in Italy, Germany and England were enabled to play, and did in fact play, a conspicuous part in the evolution of modern society.

After the cities and towns obtained their charters and secured their independence, European society took on a brighter hue. Progress was without halting. Thus in the 11th century appeared the "morning twilight," a brightness and hopefulness unknown for many generations; in the 12th the "dawn" of a new day; and in the 13th, the "sunlight" of modern civilization. At this period the cities in the main were independent, commanding, powerful. Politically this period is the beginning of the fall of mediaeval empire, and economically it is the struggle of trade, manufacture and agriculture against feudalism and everything incident thereto. Many writers contend that, on the whole, the 13th century is the most marvelous of all centuries in recorded time. It was a great century, it is true. It was the period of the building of cathedrals; of the unsurpassed intellectual creations of Dante; of the founding of the European universities; of Magna Charta; the evolution of government; the early development of our system of equity jurisprudence; the period of achievement from which many great things resulted; the gathering of the intellectual forces which wrought the miraculous transformations of the Renaissance. While this revival and marvelous advancement was undoubtedly due to many contributing causes, not the least was the urban life then vigorous throughout Europe.

At the close of the 14th century European cities and towns in the main dominated all political, industrial and public activities. Gradually they suffered a loss of prestige from the 15th to the 18th centuries, and finally fell under complete control of the state government.

It is well to recall that it was the mediaeval towns and cities which preserved and transmitted the fruits of intellectual achievement of man before the fall of Rome; that it was the cities and towns that originated and fostered the revival of learning, established the European universities, and developed scholars and intellectual leaders, as Peter Abelard, Albertus Magnus, St. Thomas Aquina, Alexander of Hales and the Bishop of Lincoln. In the 12th century, schools of Roman jurisprudence were established in cities in Italy and France, and thus our knowledge of the civil law, developed by the acute and comprehensive legal mind of the Roman, was obtained. Popular education also is a valuable contribution of mediaeval urban life. As early as the 13th century municipal Latin schools were planted, and in the 14th century common schools were established in the cities and towns of Germany and England. In the Netherlands in the 16th century "the city schools became centers of culture, in some cases even minature universities."

In this incomplete sketch it would be well to speak briefly of the community life of the land which gave birth and nurture to our municipal institutions, and to our law and jurisprudence, whose roots are still embedded in Anglo-Saxon soil. While Britain was the last conquest of the Caesars, where the Romans remained nearly four hundred years when they withdrew their legions in 410 A. D., slight traces of Roman political institutions and law remained. The municipal institutions of the English race originated from what has been termed by Green, "the farmer commonwealths." Such institutions sprang from the genius of the early Saxon people whose dominating trait was to give liberty and security to the individual, sustained by local government conducted by neighbors. The early Anglo-Saxon system in England bears close analogies to the German system as described by Tacitus, and it is quite certain that the former developed from the latter. The communities were formed on the self-governing model.

Ancient village communities existed in England, in the Scotch lowlands and highlands, in the old Irish society, and they appear in the early laws of Wales, and among the original Celts and Gauls.

The village community in early England, as elsewhere, was at first formed of men bound together by ties of kindred, in its first estate natural, in a later state either of kindred natural or artificial. The New England town, the parish of Old England and the German mark in organization are much alike. While in the town and parish the ties of family or kindred were not the chief motives for association, as in the Teutonic mark and village community, the self-interest of those who formed the town and the parish was the real motive which lead to their formation. Their interests being identical they sought to advance the common good by cooperation, a union of individual forces. The modern urban community, as well as all organizations of humans, rests on the same principle.

The fundamental principles of the Constitution, which have their roots in Anglo-Saxon times, determine the present structure and functions of local administration in England. We see in English municipal institutions a product of time, the germ of which, like the germ of a plant, exists in the nature of the men who started them and which developed from this source in various forms, according to the lights and needs of the society of men from generation to generation for whom they were fostered and whom they were made to serve. Local government in England was an Anglo-Saxon principle. Though it has passed through many stages, many old forms and traditions still abide; so it may be said that the present various authorities in the several local areas are in part the inheritance of an old England with centuries of history behind it. * * *

Embodied in the laws of the Saxons, developed by community life, was the ancient maxim of the common Law, as Coke points out, that "common right be done to all, as well poor as rich, without regard to person." In the time of Edward I a statute formally announced this as the king's will and command. Thus the principle of law and justice, if not always the practice, was early formed in the nation, and in every community thereof. As we regard our liberties, the English regard theirs as an inheritance derived by them from their forefathers and to be transmitted to their posterity.

After the Norman conquest the government of England was first centralized and unified, and afterwards, in some measure, decentralized and localized. The period "in the development of the Anglo-Norman state is occupied by an attempt to bridge over the chasm which divided the local instinct of the governed from the centralizing policy of the government, by changing the Norman organization of the kingdom into one, more in conformity with the territorial patriotism of the counties or shires." The permanent consequences of the struggle are found in the new system of justices of the peace created by Edward III, "which was a compromise between two excesses—the centralizing tendencies of the Norman tradition and the obstinate provincialism of the Anglo-Saxon."

In one respect at least the Norman idea of governmental centralization wrought a change in the relation of local and central authority. It lead to a consideration of boroughs, and municipal corporations as merely governmental areas or districts, without autonomous rights or private legal duties. But the attempt of the Normans to supplant the old Saxon freedom, the chief feature of which was home government, with the feudal system and their view of centralization proved a failure after centuries of conflict. The Norman was the conqueror in battle, and vainly attempted to guide and curb the destines of the Saxon race, but on that broader battlefield, in the conflict of the centuries where nature's unerring law secures the survival of the fit-

test, there the victor's wreath rests upon the brow of the Saxon. In all changes of policy, of dynasty, of peace and internal war, and even of conquest which that country has undergone since the days of Alfred, the Saxon principle of local self-government has never been abated or abandoned.

Finally as to the English municipal system, it should be mentioned that in both form and spirit—but not in fundamentals—the English constitution during the last eighty-five or ninety years has greatly changed. In the first part of the 19th century a new conception of what government should be—its nature and its service to the people—possessed the minds of many enlightened Englishmen. Then re-construction of governmental institutions begun in earnest and was promoted with enthusiasm. Numerous changes, profound and comprehensive in structure and functions of national and local government followed one after another. The Reform Bill of 1832 sought to renovate county institutions. It sought to emancipate the county inhabitants from the dominating political influence constantly exerted over them for centuries by the landed gentry. The Municipal Corporations Act of 1835 sought to put the control of the administration of boroughs, cities and towns in the hands of their inhabitants, and take it out of the control of the landed gentry, and privileged classes. From 1832 to 1888 the work was continued. During this period, to accomplish the end sought, in addition the right of suffrage was so extended that, with the essential changes in national and local government, it may be truly said Democracy has, in the main, gained the ascendancy. This ascendancy was due partly to the widespread prosperity and unsurpassed strength of England in manufacture and commerce, achieved during the period of change, but more, it is certain, to the influence on the English people of the earlier triumphs of Democracy in France and America. Vigorous Individualism, as we know, appeared in the 18th century. It has grown steadily with the advance of democratic institutions. * * *

Such, in brief, are the stones from which our municipal institutions were immediately hewn in the Colonial days, but the germs thereof, as already intimated—as were those of English institutions, also—are derived mediately from the earliest community life. With the latter fact in mind, we can readily see the continuity of development in human institutions; that the present and future are invariably built up with fragments of the past, and we can appreciate the full force of the oft quoted words of the Bishop of Oxford, that "the roots of the present lie deep in the past; and nothing in the past is dead to the man who will learn how the present comes to be what it is."

Urban life everywhere, in the closing years of the last and the opening of this century, has developed scientific regulations relating to public health (a subject that has broadened in late years) as sanitation, infectious and pestilential diseases, preventing and abating nuisances, providing sewerage and drainage, lighting, water supply, regulation of cemeteries and burial grounds; hospitals, tenement and lodging houses; the maintenance and caring of streets and public ways, as improving and lighting them and keeping them in safe condition for passage, and regulating traffic thereon; local improvements generally; city planning, public parks and recreation grounds. While the latter were known to the urban life of the ancients, and generously provided for, in matters of public health and sanitation, the inhabitants of neither the ancient cities or towns, nor those of the mediaeval period, had the slightest conception. The manifold conveniences and comforts in these respects, therefore, are the priceless benefits we enjoy today which were originated and developed by the modern municipality in this and other lands. Surely, urban life affords the best opportunities to attain the highest intellectual standards. It gives constant contact of

mind with mind, stimulates, develops and strengthens the intellect, inculcates the spirit of emulation, and leads directly to the discovery and invention of those things which promote health, increase energy, and gives to life its stern realities, and spiritual value.

Having shown in some measure wherein succeeding generations are debtors to those who created and developed the urban life of the past, it is well to speak a little of proper standards, or what some are pleased to term ideals, in public life, and then to point out our lasting debt to our ancient brethren in their efforts to bring within their grasp, by means of their peculiar political organism, the city-state, the enjoyment in all its fullness of what they called a "perfect and self-sufficing life." In this work, I believe, the Greeks and Romans made their most valuable contribution to modern civilization.

In the first place, in the administration of the functions of government, inquiry is invited as to what standards or ideals should be applied. At present many seem to realize how incomplete is real knowledge of the true principles of the proper regulations of society, and how insufficient in its concrete applications is the conception of rendering to each one his just due. With ease we can perceive the narrowness of the ideas of primitive societies and the absence of controlling ideals. In the highly organized community or state, the possibilities of progress in all lines of human endeavor is at once seen, whereas in a crude form of association we see how art and literature, morality and material comfort, halt or stumble. As intelligence increases, ideas expand, and standards or ideals begin to appear. At first they are limited to the individual, the family, the clan or tribe. When they expand sufficiently to comprehend the community as a whole—its rights, duties and burdens—ideas and ideals may work out rules and regulations to enable the members of the organized society to act together, to proceed in order, in harmony, promote justice (as it may be understood at the time) and advance the interests of the individuals and of the community as an entirety. And as the human mind is trained and strengthened by study, observation and experience, ideas and ideals may set up better and higher standards and continue to be the instrumentalities by which the progress of the human race may be measured. Ideals fix the standards and point out the aims and goals sought to be reached, and with the progress of enlightenment, these standards, aims and goals, in like manner, advance higher and higher. "The progress of humanity, if cyclic, is continuous; it is in the nature of a rising tide, each wave reaching a point higher than the last. History justifies a sober optimism."

By proper standards or ideals, in social and public relations, we may seek to establish justice or the rendition to every person his just due, and this is the true end and object of government, indeed, of all human organization. It is safe to affirm that no society, ancient or modern, has ever attained the perfection of its aims or ideals. It is certain that political standards or ideals spring from the time and country of their origin, that is, they are born of human experience and fashioned to meet governmental problems. Ideals so set up are modified from time to time and are often discarded. Such is inevitable. Failure of realization is due to fallible human nature. The conception of approximate perfect political organization and administration may fix certain standards of conduct on the part of those who work the public organism and the society of individuals for whose benefit it is worked. These standards embrace mental and moral viewpoints, fitness, competency, and loyalty. Apart from criminality, envy and jealousy, inability to understand and general human weakness, are factors ever present in the practical working of the organism. Although conscientiousness of a high type and an exalted form of justice may prevail,

still the limitation of human mentality would keep perfection far away. Until humanity has traversed that long and weary road and reached the point where all are entirely good and perfectly wise, government must continue to admonish "thou shalt" or "thou shalt not," and if thou doest or thou doest not, take thy penalty as sanctioned, and thus continue the confusion, dissatisfaction and dissensions that have ever characterized the progress of human kind.

Continual improvement of the human intellect in understanding and sufficient development of moral fibre to apply high ideals, and their acceptance by the members of the society for whose benefit they are utilized, are certain to make desirable progress. Such is an intellectual rather than a moral process, since the fundamentals of morality have been understood quite clearly by all civilized people of the remotest antiquity. It is the application of these basic moral virtues to the complex conditions of human society, that produces confusion.

In this intellectual process of improvement, if we would be truly practical and thus render real service to society, omnipresent human attributes must not be put of view. In every ideal of value, therefore, certain facts as to human nature, the stage of mental development and human experience, must be taken for granted. With changes in society, moreover, it must not be forgotten that new aims, theories and institutions are necessary. Political or governmental problems differ in each age and often in each decade. For example, it is a matter of common knowledge that the combined efforts of the great movements at the close of the 18th, and the beginning of the 19th centuries, when the French Revolution, the Industrial Revolution and the Napoleonic era remade Europe politically and industrially, wrought changes in ideals; as did the American Revolution; and as did the World War in our own day.

The causes which produce the conditions in human government, of course, must be found in the individuals who compose it. It is equally clear, moreover, that changes from decade to decade in the constitutions of societies are due to the changes in the human mind. "Man has not, in our day, the way of thinking that he had twenty-five centuries ago; and this is why he is no longer governed as he was governed then." That an intimate relation has always existed between men's ideas and their social state, is demonstrated by the history of every people and nation. "If we examine the institutions of the ancients without thinking of their religious notions, we find them obscure, whimsical and inexplicable." In brief, there is an intimate relation between the idea of human existence and of life and opinion as to laws, rules or regulations and political institutions.

The story of the human race presents numerous examples. The Greeks and Romans have left a rich patrimony to their descendants. Among them a city-state was an area in which the whole life and energy of the people—political, intellectual, religious—was focused at one point and that point a city. By a state in our time we mean a country or territory with a central government; or, as in our own country, a group of such territories, each with its government bound together in a federal league. The Greek and Roman conception of a state was quite different. Each community or city-state had a greater or less amount of territory attached to it. While this territory was necessary as a means of subsistence, it was not the heart and life of the state which was centered in the city; the territory was a mere adjunct.

The Greeks believed that there was something akin to divinity in the polis, that it was a potential personality which fitted it far beyond all other human associations to develop in man all of his latent powers—all there was in him. It is familiar that Plato immortalized the polis. He connected this political form with the "moral and intellectual perfectibility of man." Aristotle, in his oft quoted language, said

that the end of the city-state is "good life" —that which "best realizes the best instincts in man"—while in the early form of society, it was "simple life." The state is capable of making the citizens good and just men; they, in a community of well-being, in families and aggregations of families, may enjoy "a perfect and self-sufficing life." And so say many other Greek philosophers and writers who enjoyed in all its fullness the comfort, leisure, liberty and culture of the city-state in its perfection. They constantly contrasted their own happy lot with the less favorable conditions of peoples and states around them whose political institutions were loose, badly organized, crude and undeveloped. Likely they saw the difference with a clearer vision than it is possible for others to see it.

As with us, relating to the impersonal power of the Law, the polis—the personality embodying all power—the Greek found, influenced his life in two directions. The one trying to shield him from evils which might attack him from without; the other seeking to direct his activities, that he might not interfere with the rights of others, but at the same time allowing him such freedom as would enable him to develop fully, and thus produce a strong, beautiful physical body, and a master intellect, so that he might engage his activities for the advancement of the polis. So believing, the Greek practiced self-restraint, avoided impulsive and rach acts and those springing alone from mere self-will, invoking at all times moderation and seeking to be entirely reasonable in his conduct. He thoroughly believed in the wisdom and goodness of those who directed and controlled the affairs and destinies of the polis. In his profound respect for, and complete allegiance to the polis, the Greek never wavered.

All Athenians, to the limit of their capacities, freely contributed liberally to all public objects. In the best days of Athens, in property, many citizens were moderately well off. Much of the privately accumulated wealth was employed on education in all lines that every Athenian might be enabled to develop his physicial and mental powers to the utmost, in order to be utilized without stint for the good and glory of the state. Therefore, in the age of Athens' greatest fame, no citizen ever entertained a loose or ill thought as to the law. Respect and even reverence for governmental authority was thoroughly implanted in the mind of every citizen. Public service was his chief concern. When pure democracy was in vogue, much of the time of each citizen, at varying periods, was employed in administration of public regulations. Each citizen kept his thoughts steadily on the healthy and stable progress of Athens. His interest in public life was always keen and constant. At all times he was closely identified with the community needs and the best way of satisfying them. Indeed, he was in his own firm conviction, an indispensable part of the Law itself. In his mental vision he beheld the rare genius, the marvelous intellectual gifts, the ripe experience, the conscientious and unselfish efforts of the whole citizenship of the community embodied in the magnificient and powerful personality—the Polis—working harmoniously, effectively, and continuously for the good of all. * * *

The public social aspects of American life present a vast subject. Much diversity appears. Sometime must elapse before complete assimilation (if ever) is to be accomplished. Our civilization and life as it flourishes in the nation, state and community has developed communal social conditions of a public character, which though not precisely the same in all places, furnish many common features, due to the influence of our political inheritance of freedom, the independent spirit of our people and the working of our liberal institutions. I think it safe to affirm that the structure, functions and practical administration of national, state and local governmental organs has most to do with the

purely public social activities of our people. Among the communities on the Atlantic seaboard, in the center, in the south, in the west, middle west, in the mountain regions, and those on the Pacific slope, there are many minor differences and also many striking resemblances, but in the main, all are substantially the same. We find in all, the love of freedom and the faith in freedom, which sown long ago in the human breast by the Saxon in early England, came to full flower in the days of Milton and Hampden, and passing across the sea, established here civil and religious liberty on foundations never thereafter to be shaken. We find that the citizens of all sections and communities revere the moral law, express similar thoughts, hold to like beliefs and ideals, and possess the same essential virtues by which our nation lives.

The great centers, due partly to the diversity of the population in origin, education and the institutions under which they previously lived, partly to conceptions of life, desires and ambitions, differ in many respects from the lesser communities and rural districts. All have their centers, such as they are, of business, social and civic life. In the great urban communities it is in the public hall, coliseum, odeon, theatre, hotel, club, and other places of instruction and amusement, including, during favorable seasons, parks, squares and other outdoor places. In the smaller communities and in the rural sections the inhabitants more frequently gather at the church, the school house; and in villages and hamlets, at the post office and store, or on or near a dry goods box. At these gatherings, whether of two's or three's or more, whether great or small, every phase of our public, social, business and political relations are discussed, at least with force and vigor, if not always with knowledge, erudition and wisdom. With wonderful facility profound opinions are expressed and momentous problems solved with ease.

On account of these constant associations it may be said that our public social life exhibits an activity and spirit peculiarly it own. Patriotism may thus be fostered. Nor is it concentrated in small areas. Unlike the ancients, our first pride is not the spot to which we belong. Our city or community is not always the object of our strongest affection. Rather our loyalty extends to the nation. While devotion to community and state is always strong among our people, on the whole, it should be said that our greatest pride extends to the achievements of our national organization; and today, to our ideas and ideals as the leading world Power.

As a people we may establish a perfect system of laws and ideal local and municipal organizations. But we will greatly err if we pin our faith to and stop at mere mechanism. Some wise man said long ago that it is not by the wax or parchment of lawyers that the independence of man can be preserved. Such things are mere externals; they set off liberty to advantage; they are its dress and paraphernalia; its holiday suit in time of peace and quiet. Assuredly progress must precede from the spirit and activity of the people who work the governmental organism they set up. It is self-evident, therefore, that law has no independent existence. Its strength, vigor and justice depend alone upon the strength, vigor and justice of those who administer it, in community, state and nation. Its value is never due to its own merit, but always to the sense of justice, concepts, prowess and ideals of those into whose hands it is committed to be enforced. No law can do more than express the desires and aspirations of the people who give it form. Its spirit, its potentiality, its value as an active force can only operate by and through the human agencies set up by society. These agencies come into closer touch with the lawyer than any other class of our citizens. The lawyer is more conversant than any other class with governmental and legal powers and restrictions. He knows best the nature of our institutions and the purpose and spirit of our laws.

His commanding position, and his oath as an officer of the court constitutes him a trustee. His obligation relating to the promulgation of just and wise regulations, and their fair and impartial application in the every day operations of the governmental machinery, is greater, more binding, more sacred than the obligation of any other citizen. As such trustee, fidelity to the trust committed to his care should be his first consideration. This principle should dominate the true lawyer in every department of his reason, activity, responsibility or experience.

Look about you, and let each put the question to himself. Have I been faithful to the sacred trust?

There was a time when the lawyers were the leaders of men. They were the moving spirits in Colonial days, in the American Revolution, in framing our organic chart, and in directing the course of this republic to the path of order, liberty and justice.

Due to the revolution wrought by the late war the leadership in world affairs of North America has become a fact; European predominance has passed, not to return. At present our country is the World Power, the world's greatest creditor. In the management of our nation, therefore, we are called upon to solve many new problems and to face new duties dependent upon unfamiliar conditions; and this work will involve to a considerable extent some modification of our state and municipal institutions. To solve these fresh problems and face these new duties, will require education and leadership of opinion. Now is the time when the energy, experience, accumulated knowledge and ripe judgment of the lawyers will be required. It may be that the coming years will be years of origins, when strange and potential forces will begin to stir and upheave the surface of society to higher levels and broader outlooks. The development, let us hope, will be an intellectual development, a development not engendered by or surcharged with emotional morality or a passion to cut and fit strait-jackets for the individual, but a natural development directed by reflective and courageous minds in accordance with the reasonable thought and sensible deeds of the wise and good of all time. Now is the hour, let me repeat, when we should drink deeply at the fountains of patriotism and of wisdom.

EUGENE MCQUILLIN.

St. Louis, Mo.

RAILROADS—DANGER ZONE.

BAHLERT v. CHICAGO, M. & ST. P. RY. CO.

185 N. W. 515

Supreme Court of Wisconsin. Dec. 13, 1921.

It is the duty of one approaching a railroad track to look and listen when approaching the zone of danger and at the last practicable or reasonable opportunity, and it was not sufficient for one driving an automobile about 12 miles an hour to look when from 600 to 700 feet from the track, as he was not then near the danger zone.

Action to recover damages sustained by plaintiff in a collision with defendant's train. Hall avenue, Marinette, runs in an easterly and westerly direction, and is intersected by the track of the Chicago, Milwaukee & St. Paul Railway, which runs from northwest to southeast forming an angle of 120 degrees on the northeast side of the highway and an angle of 60 degrees on the southeast. On September 4, 1917, at about 3:30 p. m. defendant's train, consisting of an engine and 14 cars, approached the crossing from the northwest at a rate of speed of from 12 to 15 miles an hour. The plaintiff, Hugh Bahlert, approached the crossing from the east at a rate of speed of about 12 miles an hour. When about 100 feet east of the crossing he passed another car, which turned out and slowed up for him and then came to a stop. After passing the car Bahlert continued toward the track and when about 12 or 15 feet from it he first saw the train. He set his brake and turned his wheel to the right, but ran onto the track and was struck by the train.

The jury found (1)that the engine bell was not rung continuously from the time the train was within 20 rods of Hall avenue crossing, until the time of collision; (2) that such failure to ring said engine bell was a proximate cause of the injuries to plaintiff; (3) that defendant's

train was moving at a speed faster than 12 miles an hour while approaching within 20 rods of Hall avenue crossing; (4) that such fact was a proximate cause of the injuries to plaintiff; (5) that plaintiff in driving his automobile toward and upon the crossing was not guilty of more than a slight want of ordinary care, proximately contributing to his injuries; and (6) damages in the sum of $10.000.

The trial court gave to defendant the option to accept a judgment against it for $7,000 and costs, or, in case it was not accepted, it gave plaintiff the option to accept judgement for $6,000 and costs or a new trial. Defendant elected not to exercise its option, and plaintiff elected to accept judgment for $6,000. From a judgment entered accordingly the defendant appealed.

VINJE, J. (after stating the facts as above). The vital question raised by the appeal is whether plaintiff was guilty of more than a slight want of ordinary care in driving his automobile so close to the track without looking for a train. The testimony is that he looked when from 600 to 700 feet from the track, and that he drove at a rate of speed of about 12 miles per hour, and did not look again till within 12 or 15 feet of the track, when it was too late to avoid the collision. The first observation obviously too early to be relied upon alone, especially in view of his slow rate of speed. He was then not within or near the zone of danger, and would not be for a considerable time. The duty to look and listen is when approaching the zone of danger, and at the last practicable or reasonable opportunity. So his first observation cannot be relied upon to show compliance with his duty to look and listen. His second and last observation was too late. He was familiar with the crossing; had normal hearing and sight and within the last 100 feet he had an unobstructed view of the track and train for a long distance. There was evidence that some trees obstructed his view, but the nearest tree to the track was 20 feet from the right of way, and the road made an angle of 120 degrees with the track on the right-hand side—on which side plaintiff sat, his car having a right hand drive —so that in order to look for the train he could look almost straight ahead, and the tree mentioned did not obstruct his view of the train at all after he came near the zone of danger when it became his duty to look.

There is also claim made that his view was obstructed and his attention diverted by a Ford car with top down that he passed about 100 feet from the track. He estimated the distance at 75 feet, but said it was near the center of Van Cleve avenue. Measurements showed the distance to be 105 feet. He said the Ford car slowed up and stopped at the place indicated by him. If so, and there is nothing to dispute it, he had nothing to interfere with his looking for a train after he passed the Ford car a distance of from 90 to 100 feet. The car back of him could not divert his attention. Indeed, it would seem that its stopping near a railroad crossing would constitute a warning to him to stop also, at least to look for a train. And had he looked during the first 60 feet after passing the car he could have seen the train in time to avoid it.

Plaintiff relies upon the case of Gordon v. Ill. Cent. Ry. Co., 168 Wis. 24, 169 N. W. 570. But in that case there were obstructions to the view of the train for a long distance back from the track, and it was only during the last 30 feet that the traveler had an obstructed view of the train, and it was said that there could be no assumption that the deceased neither looked nor listened for the train. Here we have plaintiff's own testimony that he neither looked nor listened except at two points, one too early and the other too late.

We reach the conclusion that from the undisputed evidence plaintiff was guilty of more than a slight want of ordinary care, and hence cannot recover damages. In arriving at such conclusion we are not unmindful of the weight that should be given a verdict approved by the trial court. Were the evidence as to the main facts conflicting, the jury's finding would ordinarily be conclusive. But here there is no conflict in the evidence. The only question is what conclusion should be drawn from it as to the degree of contributory negligence. To allow the verdict to stand would be to permit the most flimsy excuse for diversion of attention to abrogate the rule as to duty to look and listen. Such an excuse must be substantial. White v. Minneapolis, St. P. & S. S. M. R. Co., 147 Wis. 141, 133 N. W. 148. As before suggested, the alleged excuse, namely, the stopping of the other car before it reached the railroad crossing, was more in the nature of a warning than an excuse.

Judgment reversed, and cause remanded, with directions to dismiss the action upon the merits.

NOTE.—*Place at Which Motorist Should Look and Listen for Train at Railroad Crossing.*—A motorist is not required in all circumstances and conditions to look or listen at a particular time, in a particular direction, or from a particular place, for an approaching railroad train when he is about to cross, or is in the act of crossing the track. Union Tr. Co. v. Haworth, Ind., 115 N .E. 753; Lake Erie & W. R. Co. v. Sanders, Ind. App., 125 N. E. 793.

If he looks and listens at a place where people usually do so,, it cannot be said, as matter

of law, that it was not a proper place from which to look. Knepp v. Baltimore & O. R. Co., 262 Pa. 421, 105 Atl. 636.

It has been held that he is not required to look at the most advantageous place; for this would be putting upon him the burden of not only knowing the most advantageous point, but also of exercising the highest degree of care, while all that is required of him is ordinary care. Alloggi v. Southern Pac. Co., Cal. App., 173 Pac. 1117.

The fact that he can stop near the track with greater convenience than can the driver of horses will be considered in determining the reasonableness in which he looks and listens. Chase v. New York, C. & H. R. R. Co., 208 Mass. 137, 94 N. E. 377.

For full treatment of the subject of the duty of motorist to look and listen at railroad crossings, see Berry, Automobiles (Third Ed.), Sec. 686 *et seq.*

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS ASSOCIATION, COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 203.

Newspaper; Employment; Relation to Client; Relation to Third Persons—Acceptance of employment from newspaper to answer inquiries respecting law and legal rights—Objectionable.—In the opinion of the Committee, is it professionally improper for a lawyer to accept employment from a daily newspaper to conduct a column headed as follows: "Answers to Law Questions by ***" (naming him), "Attorney at Law," in which he shall answer inquiries upon law directed to him through the newspaper, such questions relating:

(a) to general information respecting the state of the law upon specific subject;

(b) specific information respecting the legal rights of inquirers under given circumstances;

(c) with or without remuneration from the newspaper?

ANSWER No. 203.

In the opinion of the Committee, the course suggested is objectionable,—because it regards it as improper advertising of the attorney (See Canons of Ethics, American Bar Association, No. 27), and it considers that the answering of questions respecting the legal rights of the inquirers to whom the attorney does not sustain a professional relation, is not to be approved because it tends to diminish the sense of personal responsibility of the attorney to the person so inquiring, and it introduces an intermediary who furnishes the professional service.

The Committee abstains in this answer from expressing any opinion upon the propriety of the conduct if it were confined to the first branch of the question (a).

CORRESPONDENCE.

THE DECLARATORY JUDGMENT.

Editor, Central Law Journal:

The article on "The Declaratory Judgment" (94 Cent. L. J. 75) was written for the meeting of the Kansas Bar Association of 1920, held at Wichita. It was there read. Previous to the reading of this article a resolution had been adopted to shelve the proposed "Declaratory Judgment Law" until the next year. After the reading of the article the committee on Procedural Reform re-met and decided to propose the passage of the act at the next meeting of the legislature. This was done and the act was passed and is now a part of the civil procedure of Kansas. It has since been declared constitutional by the Supreme Court of Kansas.

PHILIP L. LEVI.

Kansas City, Mo.

[In a letter Mr. Levi wrote us at the time we received the article in question, he stated that this act had been passed by the Kansas legislature and was in force in that state, but in some way it was overlooked and we failed to revise the article to conform with the facts.—EDITOR.]

HUMOR OF THE LAW

An old darky got up one night at a revival meeting and said: "Brudders an' sisters, you knows an' I knows dat I ain't been what I oughter been. Ise robbed henroosts and stole hawgs, an' tole lies, an' got drunk, an' clashed folks wi' mah razor, an' shot craps, an' cussed an' swore; but I thank the Lord der's one thing I ain't nebber done; I ain't nebber lost mah religion."—*Western Christian Advocate.*

Talk about our Sunday blue laws! Here's a decree issued not long ago by the mayor of a little commune in the Pyrenees:

"Whereas, the young people of the commune are wont to meet and dance every Sunday after mass, and the noise they make frightens the cocks, hens, and other animals of the village, we hereby prohibit dancing within the bounds of the commune during the hours in which the domestic animals take their repose."—*Case and Comment.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Automobiles**—Collision.—Where boulevard consisted of strip of asphalt 30 feet wide with car track on either side and space 8 feet wide between tracks and curbs, and plaintiff was proceeding along his right side of asphalt and defendant automobilist was proceeding along his right side of strip, and car in front of defendant started to pass stationary repair wagon, but suddenly stopped, rendering it necessary for defendant, on account of his rate of speed, to turn still farther to the left and to collide with plaintiff's car, defendant was at fault.—Reed v. Klein, N. Y., 190 N. Y. S. 640.

2.——Collision.—In an action for injuries to an automobile passenger in a collision with defendant's truck, the automobile driver's concurring negligence was no defense, if defendant's negligence was also one of the proximate causes of the injury.—White v. Carolina Realty Co., N. C., 109 S. E. 564.

3.——Duty of Passenger.—Where a passenger in an automobile has an opportunity to learn of and avoid the danger of its being struck by a street car, it is his duty, in the exercise of ordinary care for his own safety, to warn the driver.—Grifenhan v. Chicago Rys. Co., Ill., 132 N. E. 790.

4.——Railroad Crossing.—While the assumption that a railroad crossing is in reasonably safe condition does not exempt an automobile driver approaching it from the duty of exercising proper care for his own safety, that assumption may be considered in determining whether he did exercise proper care under the circumstances.—Vann v. Atlantic Coast Line R. Co., N. C., 109 S. E. 556.

5.——Right-of-Way.—Automobile driver, approaching on right side of street, another street opening into such street on right side thereof, was charged with knowledge and expectation that a car might cross his path from such other street, but not with knowledge or expectation that a car would cross his path by turning into such other street from other side of street along which he had been driving, without reasonable warning.—Fernald v. French, Me., 115 Atl. 420.

6.——Unlicensed Driver.—An automobile operated on the highway by an unlicensed driver is not an outlaw and a nuisance, so as to render the owner liable for all injury caused thereby, irrespective of negligence in its operation or of contributory negligence on the part of the injured party.—Black v. Hunt, Conn., 115 Atl. 429.

7.——Use by Child.—Where a father provides an automobile for the pleasure, comfort, and entertainment of his family, he is responsible for an injury negligently caused by it while being driven by one of his children, by his permission.—Graham v. Page, Ill., 132 N. E. 817.

8. **Bankruptcy** — Common-law Trust. — Under Bankruptcy Act, §§ 4, 5, declaring persons, partnerships, corporations, and unincorporated companies subject to adjudication as bankrupts, a trust to carry on a business, known variously as a "common-law trust," or a "pure trust," or a "Massachusetts trust," may be so adjudicated; the term "any unincorporated company" being a comprehensive term, and, if given normal meaning, used as a part of the entire context, includes such trust.—In re Parker, U. S. D. C., 275 Fed. 868.

9.——Composition.—If the creditors do not see fit to appear and protect their interests, after beng duly notified of pendency of offer in composition, no evident fraud being practiced, the court in bankruptcy proceedings ought not to refuse approval of the composition, notwithstanding a report of the referee under Bankruptcy Act, § 12b, in which he states that, in his opinion, the composition is not in the best interests of the creditors.—U. S. D. C., 275 Fed. 880.

10.——Partnership Property.—On involuntary proceedings served on a partner, trustee in bankruptcy became vested by the adjudication with the title to the bankrupt's property, wherever situated in the United States, and with title to the property of the individual partners, as well as the firm property, notwithstanding some members were not adjudicated bankrupt.—Carter v. Whisler, U. S .C. C. A., 275 Fed. 743.

11.——Preference.—Payments for current supplies by a mail order house in precarious condition, but expecting to avoid bankruptcy, to a wholesaler, in accordance with creditors' agreement that claims for current supplies furnished during the term of the agreement should be preferred, held not preferential.—In re Marley-Morse Co., U. S. C. C. A., 275 Fed 832.

12.——Preference. — A creditor charged by bankrupt's trustee with receiving preference is entitled to a plenary suit, if objection be timely made.—In re Rockford Produce & Sales Co., U. S. C. C. A., 275 Fed. 811.

13.——Preference.—Under Bankruptcy Act, § 64a (Comp. St. § 9648), the estate of a bankrupt adjudicated such March 22, 1919, on application filed that day, was, as to income earned in 1918, subject to the preferential claim of the state of Wisconsin, enacting a Soldiers' Bonus Act on September 11, 1919, and which by another act of the same Legislature was to be raised chiefly by an extra or surtax on 1918 incomes; "all taxes," as used in such section, being a comprehensive term, including personal as well as property taxes, income as well as real estate, and the provision "legally due and owing" restricting both kinds of taxes.—In re F. B. Borden Co., U. S. C. C. A., 275 Fed. 782.

14.——Residence of Trustee.—Where the person appointed trustee by a majority in number and amount of creditors was within the qualification of Bankruptcy Act, §§ 44-56, referee was not authorized in disapproving the appointment on the sole ground that the person, though living within the district, lived at too great distance from the business of the bankrupt.—Petition of Safran, U. S. C. C. A., 275 Fed. 819.

15.——Right to Discharge.—Findings against a bankrupt's right to discharge, on evidence on issues as to his making a false statement of his financial condition to secure credit, and making a false statement when examined in respect to property statement, will be sustained on appeal, if there is evidence, though disputed, to support them.—In re Gould, U. S. C. C. A., 275 Fed. 827.

16.——Subrogation. — Where one advanced money to a bankrupt, to be used in payment of mortgage bonds, and such bonds and interest were paid, and he accepted for security a larger amount of bonds represented by a new bond issue, and took no assignment of the first mortgage bonds, and did not agree with bankrupt that he would have a lien similar to the lien of the holders of the canceled bonds, and did not record the new trust deed, he was an unsecured creditor, and was not entitled to subrogation.—In re Rogers Palace Laundry Co., U. S. C. C. A., 275 Fed. 829.

17.——Unrecorded Assignment. — Under the law of Georgia, the right of an assignee in an unrecorded assignment of a bond for title to land as security for a debt is subordinate to the lien of a judgment creditor of the assignor, and the debtor's trustee in bankruptcy, having the rights of a judgment creditor, has a lien which takes precedence of the unrecorded assignment.—Bank of Madison v. Bell, U. S. C. C. A., 275 Fed. 835.

18.——Voluntary Petition.—Stockholder of a corporation, who had knowledge of all the steps taken from filing of voluntary petition in bankruptcy to sale of the assets, and remained inactive, was not thereafter entitled to defeat the voluntary petition because there was no proper corporate action authorizing the institution of the proceeding, or to have the adjudication in bankruptcy set aside on that ground.—Alexander v. Farmers' Supply Co., U. S. C. C. A., 275 Fed. 824.

19. **Bills and Notes**—Authority to Sign.—A person who authorizes another to attach his name to a note is as liable thereon as if he personally wrote his name thereon.—In re Irving's Will, N. Y., 190 N. Y. S. 622.

20.——Intent of Indorser.—Where cashier of bank, owning one share of stock therein, indorsed a note payable to the bank under an agreement with bank examiner that the latter would not strike the note from the list of the bank's assets and impair its capital, and the bank never became insolvent, it could not recover from the cashier as a guarantor, since the consideration for the agreement was the mutual promises of the cashier and the bank examiner; the only object of the agreement being to protect creditors of the bank.—Cripple Creek State Bank v. Rollestone, Col., 202 Pac. 115.

21.——Knowledge of Defect.—To defeat recovery on a note in the hands of a purchaser for value, there must be evidence of actual knowledge of the infirmity or defect, or knowledge of such facts that the action of the indorsee constituted bad faith; presumption of law being in favor of the purchaser under Rev. St. 1908, § 4519.—Hukill v. McGinnis, Col., 202 Pac. 110.

22. **Brokers**—"To Sell."—The words "to sell" and "to sell or find a buyer" in a real estate brokerage contract are synonymous terms.—Grinde v. Chipman, Wis., 185 N. W. 288.

23. **Carriers of Goods**—Loss from Platform.—A carrier, having posted notice that it would not be liable for goods left on platform until issuance of bill of lading, was not liable for loss of bale of cotton placed on platform by shipper, but stolen prior to issuance of bill of lading, notwithstanding shipper's custom of placing cotton on platform when purchased without obtaining bill of lading until the close of the business day, when bill of lading for the full day's purchases would be issued.—Behrmann v. Atlantic Coast Line R. Co., S. C., 109 S. E. 397.

24.——Uniform Bill of Lading.—The uniform bill of lading being prepared for use throughout the United States, its provisions are not to be construed in the light of the statutory law of any particular state.—Cereal Products Co. v. Delaware, L. & W. R. Co., N. Y., 190 N. Y. S. 698.

25. **Carriers of Live Stock**—Joint Liability.—In an action against the initial and a connecting carrier for damages for failure to deliver cattle shipped, the court instructed the jury that the liability of the defendants "is not a joint liability," and in other instructions suggested or implied that a verdict for the plaintiff against all of the defendants was proper. Held that, under the pleadings and the evidence, the first instruction was correct, and that the latter was inconsistent with it. Held, further, that the error was prejudicial to the defendant, whose liability was not established by the proofs, and against whom a judgment was rendered.—Mayhall & Neible v. Chicago, B. & Q. R. Co., Neb., 185 N. W. 326.

26. **Constitutional Law**—Excess Fee of Officers.—At the expiration of plaintiff's term of office she had a vested right to one-half the excess fees as provided by the act then in force, and the enactment of chapter 198, Laws 1919, providing that, "if any register of deeds has collected fees allowed as clerk hire under the present law, such amount shall be deducted from any salary claimed under this act, and a cause of action shall accrue to the county for the recovery of such fees if the officer is out of office," cannot be given a retroactive effect so as to deprive her of vested rights.—Barrett v. Board of Com'rs of Montgomery County, Kan., 201 Pac. 1098.

27.——Free Press.—The freedom that is guaranteeed by the Constitution to freely write and publish on all subjects, is qualified by the provision that imposes responsibility for the abuse of that freedom.—Bee Pub. Co. v. State, Neb., 185 N. W. 339.

28.——Objection to Statute.—Where an act of the Legislature, authorizing the issuance and sale of debentures, is validated by the adoption of a proposed amendment to the Constitution, an appeal which raises the question of the constitutionality of the statute, which might be meritorious but for the amendment to the Constitution so adopted, will not be considered after the curative amendment has been adopted by vote of the people.—Lopez v. State Highway Commission, N. M., 201 Pac. 1050.

29. **Corporations**—Cancellation of Stock.—If a stockholder of a corporation, other than a railroad company, fail to pay any installment due upon his shares of stock, when required to do so by appropriate corporate action, and the company desires to enforce its claim for such unpaid balance by a direct proceeding against the stock itself, instead of against the owner, it cannot summarily cancel such stock, but must follow the foreclosure procedure prescribed by sections 29 and 30, chapter 53, Code, unless by a by-law the corporation has provided for the method of cancellation.—Vasey v. New Export Coal Co., W. Va., 109 S. E. 619.

30.——Liability of Stockholders.—Under Stock Corporation Law, § 57, providing that stockholders of stock corporations are personally liable for debts due to any of its laborers, servants, or employees, a salesman paid for his services in wages based on the percentage of accepted sales may maintain an action against a stockholder for unpaid commissions.—Hitchcock v. Pagenstecher, N. Y., 190 N. Y. S. 706.

31.——Removal of Director.—That a director of a corporation, who was also secretary and treasurer and one of the two equal owners of stock, was in temporary financial difficulty in an independent business and, with the knowledge of some of his creditors, had gone to California for his health, did not authorize his removal from such offices, where no business had arisen requiring his vote or presence, or his signature, and it was not shown that there was any probability of any such question or matter arising before he in fact returned; and, where his removal was to enable the other stockholder to secure control of the corporation, the attempted removal was null and void. —Petition of Korff, N. Y., 190 N. Y. S. 664.

32.——Ultra Vires. — A corporation cannot avail itself of the defense of ultra vires when a contract has been in good faith fully performed by the other party, and it has had the full benefit of the performance and of the contract.—Woollard v. City of Albany, N. Y., 190 N. Y. S. 741.

33. **Deeds**—Contingent Remainder.—Where an owner executed a deed, reserving a life estate in himself and his wife, and creating another life estate in his children, with remainder in fee in the grandchildren, such remainder being a contingent one, the fee only remained in the grantor until the birth of a grandchild or grandchildren, so that a subsequently executed deed, purporting to convey the fee to one of his children, was void.—Bamberg Banking Co. v. Matthews, S. C., 109 S. E. 550.

34. **Divorce**—Extreme Cruelty.—"There may be extreme cruelty justifying a decree of divorce without physical injury or violence. Unjustifiable conduct on the part of husband or wife, which utterly destroys the legitimate ends and objects of matrimony, may constitute extreme cruelty."—Faris v. Faris, Neb., 185 N. W. 347

35. **Extradition** — Deportation. — Person convicted of felony in other state arrested in this state immediately after being placed across Mexican boundary line by Mexican officials with authority to deport him, after having escaped into Mexico, was "found within this state" within provisions of the statute and the federal Constitution relating to extradition, regardless of irregularities committed by Mexican officials in deporting him, in the absence of conspiracy between United States officials and Mexican officials to have him illegally brought into United States from Mexico.—In re Jones, Cal., 201 Pac. 944.

36. **Fraud**—Misrepresentations.—In a purchaser's action against the seller to recover for misrepresentations, interest at 6 per cent from the time of the transaction to the time of the judgment, on the sum the purchaser had paid on account of the misrepresentations, held properly allowed.—Domalki v. Liberty Land & Investment Co., Wis., 185 N. W. 224.

37.——Right of Action.—A party, induced by fraudulent representations to enter into a contract which had been partly performed before the discovery of the fraud, does not waive the fraud by an election to affirm the contract, complete its performance, and retain what was received under it, and is not precluded from recovering damages sustained by reason of the fraud because of delay, if his action is begun within the period fixed by the statute of limitations.—Bushey v. Coffman, Kan., 201 Pac. 1103.

38. **Highways** — Assessment for Improvements.—Sp. Acts 1920, No. 38, assessing benefits against real estate for road improvement district, held not void for failure to provide a tribunal to determine the fairness or unfairness of the assessment, since chancery will determine demonstrable mistakes and errors in legislative assessments on proper allegations, irrespective of whether provision was made in the act for a tribunal to determine the fairness or unfairness of the asssessments.—Schueller v. Road Improvement Dist. No. 4, Ark., 234 S. W. 615.

39. **Innkeepers**—Loss of Guest's Money.—If a guest of a hotel has actual notice of a requirement that he deposit his money and jewelry at the office, or be personally responsible for its safety, his failure to make such deposit is negligence barring recovery for loss of such property by theft from his room in the hotel.—Nesben v. Jackson, W. Va., 109 S. E. 489.

40. **Insurance**—Common Carrier.—Where one hired an automobile from a garage company which hired its cars to persons and allowed such persons to have control and direct the use of the car, such garage company is not a common carrier within the rule permitting double indemnity on an insurance policy for one killed while traveling in a public conveyance, and the facts that the company had a city license to run a taxicab line, and that it advertised its business, were immaterial.—Rathbun v. Ocean Accident & Guarantee Corporation, Ill., 132 N. E. 754.

41.——Damage by Rain.—Under a policy of insurance "against all direct loss or damage by fire," which provided that the insurer should not be liable for loss caused by neglect of the insured to preserve the property after the fire, insured was not entitled to recover damage caused by rains starting several days after the fire by reason of the fact that no inspection was made by the insurer for about three weeks after the fire, where insured could have preserved the property by using a tarpaulin, or army fly, or putting shingles on part of the roof.—Benson v. Firemen's Ins. Co., Ark., 234 S. W. 628.

42.——Forfeiture.—Under an insurance policy providing that no officer, agent, or other representative of the company should have power to waive any of its terms except in writing thereon or attached thereto, an agent may not effect a waiver unless it is so written or attached, but the company itself may orally waive a forfeiture or by its acts and conduct estop itself from asserting the same.—East Side Garage v. New Brunswick F. Ins. Co., N. Y., 190 N. Y. S. 634.

43.——Insurable Interest.—Only the insurer can take advantage of lack of insurable interest in the beneficiary of a beneficial association certificate, and a reinsurer of the association's certificates cannot do so.—American Ins. Union v. Manes, Ark., 234 S. W. 496.

44.——Military Service.—In suit on life policy following insured's death of pneumonia while engaged in military service at a students' army training camp in the United States, the anti-military clause of the policy held no defense.—Farmers' Nat. Life Ins. Co. of America v. Carman, Ind., 132 N. E. 697.

45. **Intoxicating Liquors**—Agency.—While it may not be unlawful for one to consume his own intoxicating liquor, it is unlawful for him to be the agency through or by which another may gain possession thereof.—Lennard v. State, Ind., 132 N. E. 677.

46.——State Law.—In a prosecution for transporting intoxicating liquor, a motion to quash the indictment because the state law was in conflict with the federal law on the subject was properly overruled.—Rozier v. State, Tex., 234 S. W. 666.

47. **Landlord and Tenant** — Forfeiture of Lease.—Where a lease gave the lessee an option to purchase during the term, but the lease was forfeited for non-payment of rent before the option was exercised, and it appeared that the lessee had mailed the rent to the lessor, who failed to receive it, it was proper to relieve from the forfeiture to enable the lessee to exercise the option.—Thompson v. Coe, Conn., 115 Atl. 219.

48.——Pasture Lands.—Under a lease of pasture lands making no provision concerning the removal of 1,000 cattle belonging to the lessor, lessee was entitled to the possession, use, and enjoyment of the entire premises from the date of the lease, in the absence of allegation and proof showing otherwise.—Leo Sheep Co. v. Davenport, Tex., 234 S. W. 691.

49. **Libel and Slander**—Slander per se.—A false charge of forgery, being a charge of felony, is slanderous per se, whether or not the check, the forgery of which was charged, lacked consideration, by reason of its having been given by defendant to plaintiff in payment of a gambling debt.—Smith v. Dawson, Tex., 234 S. W. 690.

50. **Master and Servant**—Epilepsy.—Where an employee, while engaged in the performance of the duties of his employment, fell into an ash pit, and was so burned that death resulted, his death was not from epilepsy or pre-existing disease, but from burns received from falling into the pit, and is within the Workmen's Compensation Act.—Rockford Hotel Co. v. Industrial Commission, Ill., 132 N. E. 759.

51.——Federal Compensation Act.—While an employee of the federal government may elect to take under the federal Employees' Compensation Act, he is not required to do so.—Payne v. Cohlmeyer, U. S. C. C. A., 275 Fed. 803.

52.——Interstate Commerce.—One assisting in enlarging of pit of an old turntable, for the purpose of installing a much larger turntable, was engaged in new construction and not in interstate commerce under the federal Employers' Liability Act, especially where the servant's work pertained exclusively to excavating outside of the old turntable, notwithstanding that the old turntable was being used while the new one was being constructed.—Seaver v. Payne, N. Y., 190 N. Y. S. 724.

53.——Jitney Bus.—The owners of a jitney bus are liable for an injury caused by the driver acting within the scope of his employment.—Jordan v. Interurban Motor Lines, N. C., 109 S. E. 566.

54.——Negligence of Servant. — Where employee of defendant dentist, in pulling a tooth, negligently poisoned plaintiff, jury could not find against the dentist and in favor of his employee in an action for damages.—Union Painless Dentists v. Guerra, Tex., 234 S. W. 688.

55. **Municipal Corporations**—Defect in Sidewalk.—Notice of defect in sidewalk, given to workman by person subsequently injured by reason of defect, held not a compliance with statute, making notice to "municipal officers" a condition precedent to recovery of damages, where such person had notice of defective condition previous to the time of the injury.—Harmon v. City of South Portland, Me., 115 Atl. 419.

56. **Negligence**—Attractive Nuisance.—Where a seven-year-old child injured while at play on cross-ties, piled partly on a public sidewalk, did not climb onto the cross-ties from the sidewalk, but from the adjoining vacant lot, held, that no legal duty rested on defendant street railway company to pile its ties so as to make them a safe place to play on, and it was not liable for the injury.—Charles v. El Paso Electric Ry. Co., Tex., 234 S. W. 695.

57. **Principal and Agent**—Extent of Agency.—An agent of contractor, authorized to pay accounts for labor and material entering into the construction of a road with money furnished him for that purpose, held without authority to pay for meat furnished a sub-contractor, which was used in feeding employees.—Oliver Construction Co. v. Erbacher, Ark., 234 S. W. 631.

58. **Railroads**—"Appurtenance."—A bell ringer is a "part" or an "appurtenance" of a "locomotive and tender," within the meaning of the Boiler Inspection Act, as amended in 1915 (Comp. St. § 8639a), providing that railroads must equip locomotives and tenders with proper appurtenances.—Hines v. Smith, U. S. C. C. A., 275 Fed. 766.

59.——Demurrage.—Under the Interstate Commerce Acts the charge of demurrage by a railroad company for detention of cars by a shipper or consignee is not a matter of contract between the parties, but the rates fixed by the tariff schedules filed must be charged and enforced, and it is not a defense to an action to collect such charges that the detention was occasioned by a strike, or was by orders of a sheriff, prohibiting moving of the cars to prevent inciting mob violence.—Sinclair Refining Co. v. Schaff, U. S. C. C. A., 275 Fed. 769.

60.——Explosives.—A conductor of a freight train, carrying interstate cars and engaged in interstate commerce, did not depart therefrom by turning his attention to a package containing dangerous explosives, brought to his car while waiting in a yard, by a policeman or patrolman of his employer.—Moore v. Wabash R. Co., Ill., 132 N. E. 814.

61.——Negligence.—Railroad was guilty of negligence where it violated a city ordinance requiring flagman at crossing, and burden was on it to explain absence of flagman at time of accident.—Stefanich v. Payne, Cal., 201 Pac. 940.

62.——Speed of Trains.—Even though a speed ordinance of a city has the effect to retard rapid transportation, it cannot be declared invalid as imposing an unreasonable restriction upon interstate commerce and the speedy transportation of mail.—Soucie v. Payne, Ill., 132 N. E. 779.

63. **Sales**—Breach of Contract.—Instrument providing for sale of "what ewe lambs I decide to sell from 6,800 ewes" constitutes a valid contract, and sale of such ewes to person other than purchaser named in contract constitutes a breach for which damages may be recovered.—Seis v. Corn, N. M., 202 Pac. 122.

64.——Time of Essence.—Time held of the essence of a contract to sell cotton at particular price, to be delivered before specified date, in view of evidence that the market was fluctuating daily.—Von Harten & Clark v. Nevels, Tex., 234 S. W. 676.

65. **Statutes** — Motive of Legislature. — The motives which impelled a member of the Legislature to vote for the enactment of a law cannot be made the subject of judicial inquiry for the purpose of invalidating or preventing the operation of the law.—Murry v. Nelson, Neb., 185 N. W. 319.

66. **Street Railways**—Right-of-Way of Fire Truck.—Motor Vehicle Act 1917, § 20m, and the ordinance of Pasadena make right-of-way of fire apparatus over other vehicles dependent on "due regard to the safety of the public" only so far as such "due regard" affects the person required to yield the right of way; notice to such person and a reasonable opportunity to yield being necessary to charge him with the obligation.—Balthasar v. Pacific Electric Ry. Co., Cal., 202 Pac. 37.

67. **Workmen's Compensation Act**—Disability.—The Workmen's Compensation Act does not require an applicant to continue to work if it will cause him to continuously suffer serious discomfort and pain while so engaged.—Joliet & E. Traction Co. v. Industrial Commission, Ill., 132 N. E. 794.

68. ——Permanent Injury.—Where claimant sustained a permanent injury to a nerve in the spinal column, making it impossible to raise his arms above horizontal position, the evidence showing that all functioning parts would return to normal, except the limitation on the upward motion of the arms, he was not entitled to a lump sum award on theory that he sustained a 40 per cent loss of use of both arms, making it possible to earn, together with compensation, an amount in excess of his earnings prior to the accident, but he should be given an award under Workmen's Compensation Law, § 15, subd. 3, clause designated as "other cases" providing for compensation during continuance of partial disability subject to reconsideration of degree of such impairment by the Commission on its motion or upon application of party in interest.—Knight v. Ferguson, N. Y., 190 N. Y. S. 659.